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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/816, 255	03/13/97	SCHWARTZ	

19M1/0428

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EXAMINER  
CARTER, RART UNIT  
1911

PAPER NUMBER

DATE MAILED:

04/28/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. 08/816,255	Applicant(s) George R. Schwartz
Examiner Ryan Carter	Group Art Unit 1911



Responsive to communication(s) filed on Jan 26, 1998

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

Claim(s) 1-14 is/are pending in the application

Of the above, claim(s) 1-6 is/are withdrawn from consideration

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 7-14 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Claims 1-6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected species, the requirement having been traversed in Paper No. 3. Although newly submitted claim 14 is deemed generic, in view of the election requirement only those claims which read on the elected embodiment will be examined. Applicant has elected claims 7-13 directed to the endotracheal version of the invention; however, claim 11 is directed to the neck collar version of the invention. Accordingly, claims 7-10 and 12-14 will be examined on the merits. It is further noted that upon the allowance of the generic claim, the non-elected claims will also be deemed as allowable subject matter.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7-10 and 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 7, "said coolant" in line 10 lacks positive recitation. Furthermore, no antecedent basis is provided for "the end" in line 5 and "the tissues and blood

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vessels" in line 11 of claim 7, and "the rear" in line 4 of claim 12. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen.

Cohen discloses a therapeutic pad for cooling a user's head, back and neck areas (see col.5,lns.39-49), which provides cooling treatment to the blood supply associated with the carotid artery (see col.4,lns.57-65). The Examiner asserts that the use of the Cohen device in the forementioned embodiment will lower the temperature of the blood flowing through the vessels located in the rear of the patient's oral cavity.

6. Claim 14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Klatz et al..

7. Claim 14 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tatsuki (see figs. 7-8).

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***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7-8 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baran et al. In view of Durkan. Baran et al. disclose a multiple surgical cuff for insertion into the trachea, comprising an inlet and outlet for circulation of a cooling fluid (see col.2,lns.28-40). Durkan discloses a cuffed endotracheal tube that is shaped in the form of a toroid (see col.6,lns.8-12). It would have been obvious to one skilled in the art to shape the cuff of Baran in the form of a toroid as described in Durkan, in order to optimize fitting of the device into the trachea of the user. The Examiner asserts that although not specifically stated in the devices of Baran or Durkan, the use of non-metallic, plastic type materials for making such endotracheal tubes is well-known in the art, and thus would have been obvious in Baran and Durkan.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baran et al. and Durkan as applied to claims 7-8 above, and further in view of Klatz et al. Klatz et al. disclose a brain cooling device comprising a refrigeration means that circulates a coolant through a head-mounted device which therapeutically treats a variety of head, neck and back areas. It would have been obvious to one skilled in the art to utilize such coolant circulation means in Baran et al., in order to provide a means for continuously pumping the coolant through the device.

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***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Carter whose telephone number is (703) 308-2990.

rcc

April 21, 1998

*JEFFREY R. JASTRZAB*  
*PRIMARY EXAMINER*

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